

REMARKS

In view of the following remarks, reconsideration is respectfully requested.

I. Allowable Claims

Claims 1-12, 15 and 16 were identified as being allowable. The Applicants would like to thank the Examiner for this indication of allowable subject matter.

Claims 1-12, 15 and 16 remain in their previous form (i.e., have not been amended). As a result, it is respectfully submitted that claims 1-12, 15 and 16 remain allowable.

II. 35 U.S.C. § 101 Rejection

Independent claim 14 was rejected under 35 U.S.C. § 101 for being directed to non-statutory subject matter. Specifically, the rejection states that the claimed subject matter is directed to software or program code.

Initially, please note that the Applicants would like to thank Examiner Bahta for conducting a brief telephone interview on February 11, 2009. During the interview the appropriateness of the above-mentioned rejection was discussed. Also, during the interview, Examiner Bahta suggested that the Applicants file a response explaining their position. Further, Examiner Bahta indicated that another Examiner would also review the Applicants position regarding the above-mentioned rejection.

Claim 14 recites “a computer-readable recording medium having a computer program recorded thereon ... the computer program causing a computer to execute an optimization method comprising ...” Claim 14 proceeds to define the optimization method that is executed by

the computer at the direction of the computer program. Applicants respectfully submit that the above-mentioned claim language clearly recites the Applicant's invention and is directed to statutory subject matter, since the Federal Circuit has held that such claims are, in fact, directed to statutory subject matter (see *In re Beauregard*, 53 F.3d 1583(Fed. Cir. 1995)). Typically, claims drafted in the above-mentioned format are identified as "Beauregard claims."

Further, please note that in 2008 the Board of Patent Appeals and Interferences (BPAI) held that "Beauregard claims" are statutory. Specifically, in *Ex parte Bo Li*, Appeal 2008-1213, the BPAI stated that "It has been the practice for a number of years that a "Beauregard Claim" of this nature be considered statutory at the USPTO as a product claim. (MPEP 2105.01, I). In view of the totality of these precedents, we decline to support the rejection under 35 U.S.C. § 101."

In view of the above, it is respectfully submitted that claim 14 does in fact recite statutory subject matter and, as a result, withdrawal of this rejection is respectfully requested.

Additionally, it is submitted that the method steps recited in claim 14 are similar to those recited in allowed claim 1. In other words, claim 14 is simply a "Beauregard" version of allowed claim 1. Therefore, in view of the above-mentioned indication of allowable subject matter, it is submitted that claim 14 also recites allowable subject matter.

III. Conclusion

In view of the above amendments and remarks, it is submitted that the present application is now in condition for allowance and an early notification thereof is earnestly requested. The Examiner is invited to contact the undersigned by telephone to resolve any remaining issues.

Respectfully submitted,

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